96-829

Supreme Court, U.S.
FILED
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

In re The Honorable Thomas L. Steffen, Chief Justice, Nevada Supreme Court, and The Honorable Charles E. Springer, Associate Justice, Nevada Supreme Court,

Petitioners.

No. 96-541

On Petition For a Writ of Mandamus or Prohibition, or in the Alternative, for a Writ of Certiorari to the Supreme Court of the State of Nevada.

OPPOSITION TO MOTION FOR LEAVE TO INTERVENE AS PETITIONER AND PETITION FOR A WRIT OF MANDAMUS OR PROHIBITION OR, IN THE ALTERNATIVE, A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

Respondent, Frankie Sue Del Papa, respectfully submits this response to the motion of Jerry Carr Whitehead, intervenor-petitioner (hereinafter "Whitehead") for leave to intervene as a petitioner in this matter. This response is submitted in accordance with SCR 21.4 and SCR 34, since there is insufficient time to have this pleading printed.

Whitehead's motion to intervene and petition for a writ are procedurally defective for a number of reasons. Whitehead's attempted intervention in this case as a "petitioner" is prohibited under SCR 12. It is provided in SCR 12.2, "A party who is not shown on the petition for a writ of certiorari to have joined therein at the time the petition is filed with the Clerk may not thereafter join in that petition." Thus, to the extent Whitehead seeks to join in the petition in this case "as a petitioner," he is precluded from doing so by SCR 12.2.

Whitehead has improperly joined a motion with a petition for a writ of certiorari in violation of SCR 12.2. In accordance with SCR 12.2, "A petition for a writ of certiorari shall not be joined with any other pleading." The document submitted to the Court violates this rule since it contains both a motion for leave to intervene and what purports to be a "Petition for a Writ of Mandamus or Prohibition or, in the Alternative, A Writ of Certiorari to the Supreme Court of the State of Nevada."

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Whitehead has failed to comply with SCR 13 which requires the filing of a petition for writ of certiorari to a state court of last resort "within 90 days after the entry of the judgment" sought to be reviewed. This petition is untimely. Under SCR 13.4,

> The time for filing a petition for a writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate(or its equivalent under local practice).

This petition was filed November 21, 1996, more than 210 days after the April 25, 1996, writ of prohibition was issued by the Nevada Supreme Court below, and more than 132 days after the July 12, 1996, opinion was issued in the proceedings below. Whitehead is attempting to file this petition long after the proper time period which is set forth in the rules of this Court. Respondent Del Papa incorporates by reference the arguments at pp. 21-24 of her opposition to the petition for a writ filed by Justices Steffen and Springer. This untimely petition, submitted in blatant disregard of the rules of this Court, should be rejected by the Clerk in accordance with SCR 13.3.

Whitehead, by his own admission, has no standing to appear in this matter. At p. ii of his petition he states, "he was not a party to the proceedings which culminated in the entry of the Mandamus Order." At p. 8 of his petition he states, "Judge Whitehead was not a party to the *Del Papa* proceeding." Whitehead appears to suggest at p. ii of his petition that since he was involved in "proceedings" in the Nevada Supreme Court, he must have standing in this case. To have actual standing in this proceeding, Whitehead must "'show that he personally has suffered some actual or threatened injury.'" *Valley Forge College v. Americans United*, 454 U.S. 464, 472 (1982), quoting from *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979). Whitehead has failed this requirement as well. He has no personal stake in the outcome of the writ proceeding below which was brought against Justices Steffen and Springer. Whitehead was not a party to that proceeding. Whitehead does not identify any personal right or interest of his which was affected in the proceedings below. The Nevada Supreme Court's ruled in *Del Papa v. Steffen and Springer* that the court lacks authority to conduct an investigation for news sources and to determine the "loss of prestige" of the

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judiciary. Apparently Whitehead was not concerned about nor affected by the decision below, since he elected not to attempt to intervene in those proceedings.

Whitehead's due process claim under *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) fails, just as Petitioners Steffen's and Springer's argument fails. Whitehead does not even attempt to analyze the *Aetna* decision. In footnote 14, p. 10 of his petition, Whitehead merely incorporates Steffen's and Springer's arguments by reference. In the interest of brevity, Respondent Del Papa incorporates the arguments at pp. 10-13 of her opposition to the petition.

Whitehead's very belated attempted to intervene in this matter should be summarily rejected by this Court. Not only has he ignored the Court's procedural rules governing the filing of petitions for writ of mandamus, prohibition or certiorari, he lacks standing and has failed to present a federal issue to this Court for review. In this filing, Whitehead exhibits remarkable arrogance for one who has agreed with the United States to retire from office and never again to serve in any judicial capacity in consideration of the government's agreement not to prosecute him. Respondent's App. 176a. It is disingenuous for him now to be expressing "a genuine concern for the independence of the judiciary and the integrity of the state processes under which judges are subject to discipline." Whitehead Petition, p. 14.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, BROOKE A. NIELSEN, counsel of record for Respondent Frankie Sue Del Papa in the above-entitled proceeding, being a member of the Bar of the Supreme Court of the United States, do hereby certify that, on the 26th day of December, 1996, I served copies of the Opposition to Motion for Leave to Intervene as Petitioner and Petition for a Writ of Mandamus or Prohibition or, in the Alternative a Writ of Certiorari to the Supreme Court of the State of Nevada by mailing copies thereof as noted below in duly addressed envelopes, with first-class postage prepaid, to each person below. On December 26, 1996, I deposited the envelopes with first class postage prepaid, containing the necessary copies of the said Opposition at the United States Post Office located at 311 East Washington, Carson City, Nevada. All of the following parties have been served and this mailing occurred within the time permitted under the Rules of the Supreme Court of the United States.

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DATED this 5th day of January, 1996.

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